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DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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January 9, 2014

TO: Each Supervisor

FROM: *for* Gail Farber *Matthew*
Director of Public Works

DECEMBER 17, 2013, BOARD AGENDA ITEM NO.39 – AGREEMENT BETWEEN THE COUNTY OF LOS ANGELES AND THE U.S. ARMY CORPS OF ENGINEERS AND BALLONA WETLANDS RESTORATION PROJECT

This memo is being sent in response to Board discussions on the December 17, 2013, Board Agenda Item No. 39. This memo responds to the Board's specific questions, clarifies the impacts of Board approval, and addresses issues raised by the public regarding the proposed Ballona Wetlands Restoration Project during the Board meeting.

The Memoranda of Agreement with the U.S. Army Corps of Engineers

The subject Board letter is requesting the Board's authority for the County to enter into two Memoranda of Agreements (MOAs) with the U.S. Army Corps of Engineers (Corps) for expedited review of 404 and 408 Permits and related services by the Corps for County designated projects under the Corps' jurisdiction.

Any Public Works project that is within a major waterway and involves construction and/or modification of flood control infrastructure requires permits from the Corps. Due to the Corps' limited resources and funds to review and issue permits, their permit process can result in substantial delays in project delivery. For complex projects, without funding for additional resources the Corps review would require an extraordinary and uncertain timeframe. The MOAs will allow the Corps to accept and expend funds from the County so the permitting process can proceed in a reasonable timeframe commensurate with the needs of the projects. Other agencies, such as the California Transportation Department, Port of Los Angeles, Port of Long Beach, and various counties, have entered into similar agreements with the Corps.

For cost estimating purposes, an initial list of identified projects (referred to as "priority projects") is included in each MOA. This list enumerates for the Corps the projects they may use the funding provided under the MOA to perform the needed technical analyses and assess viability of various alternative concepts. Public Works may modify this list in the future based on needs. Neither of the proposed MOAs commit the County to actually construct any project identified on the list or constitute project approval by either the County or the Corps. Rather, the purpose of the MOAs is to enable the Corps to complete its project evaluation process in a more timely manner.

The Ballona Wetlands Restoration Project

The Ballona Wetlands Restoration Project is still in the development phase and as currently proposed, involves the removal and replacement of approximately 4,500 feet of the concrete Ballona Creek Channel with a natural meandering channel, and the enhancement of approximately 600 acres of coastal wetland and upland habitat.

The project site is owned by the State of California and managed by the California Department of Fish and Wildlife as an ecological reserve. The State Coastal Conservancy, the California State Lands Commission, and the Santa Monica Bay Restoration Commission are participating partners and are leading the planning and development of the restoration project.

The Los Angeles County Flood Control District (LACFCD) maintains the Ballona Creek Channel within the currently proposed project limits. For any modification of the levees, the Santa Monica Bay Restoration Commission would need to obtain a permit from the LACFCD and the Board would need to authorize its issuance through a Board action in a public hearing.

Since Federal funding was used to build the Ballona Creek Channel, the proposed modifications to the channel also cannot commence until a 408 Permit from the Corps has been issued. Accordingly, the Ballona Wetlands Restoration Project has been included as one of the designated projects listed in the MOAs.

Public Scoping and Input

The project has been under development for several years. The California Environmental Quality Act/National Environmental Protection Act (CEQA/NEPA) process for the project was initiated by the State, who is the lead Agency under CEQA, in 2012 with an extended public scoping, comment, and input period between July 2012 and October 2012. The LACFCD is a responsible agency under CEQA.

While the proposal for this project is supported by many, this restoration effort has also drawn significant criticism. Comments such as those presented at the Board meeting were also made during this scoping process. These comments are expected to be addressed in a draft Environmental Impact Report/Statement (EIR/EIS) that is scheduled for public review in fall 2014. This will provide an opportunity for comprehensive public review and comment in regard to the project.

This project will also require numerous other permit approvals such as a Coastal Development Permit, which will also include a public input process.

Project Permitting

Public Works has submitted a 408 Permit Application to the Corps for the Ballona Wetlands Restoration Project.

While the term "expedited" is being used for the MOAs, due to the complexity of the proposed project, the Corps 408 Permit process for this project is expected to take 18-24 months to complete and require substantial resources on the part of the Corps. The Corps has indicated that it will not be able to conduct any substantial review of the permit application for this project without the funding provided for in the MOA. It is vital that input from the Corps on the project alternatives is provided now so that they can be addressed during the project development process. In addition, for Public Works to make informed recommendations on this project, it is essential that the Corps be authorized to begin its review of the application under the MOA.

As a point of clarification, the cover letter for the 408 Permit Application stated "...the LACFCD and California Department of Fish and Wildlife confirm the technical soundness and environmental acceptability of the proposal..." As the EIR/EIS is still under development, this statement does not indicate that the LACFCD has made any determinations regarding the environmental impact of the project, but rather that the conceptual level plans are generally consistent with the LACFCD's approach to environmental protection and sustainability, and that the proposal warrants a more thorough analysis.

Further, in addition to the 408 Permit, the LACFCD, as the agency responsible for the operation and maintenance of the Ballona Creek Channel, will also be requested to issue a separate permit in connection with the project to authorize the proposed modifications to the channel. In the course of determining whether or not to issue this permit, the LACFCD will need to review and consider the EIR/EIS, as ultimately certified

by the State, and reach its own conclusions regarding the environmental effects of the project as shown in the EIR/EIS.

Once the EIR/EIS process has been completed, including the incorporation and/or response to all comments received during public review, Public Works will be returning to the Board with a recommendation regarding the project. At that time, the Board will determine whether or not to approve the project, in consideration of the environmental impacts disclosed in the EIR/EIS, and accept the terms and conditions of the 408 Permit and issue a separate permit from the LACFCD.

Conclusion

Approval of the subject Board letter will in no way reduce or shortcut public review or consideration by the Board or the Corps for any project. The proposed action does not constitute an environmental finding or approval for any project that will allow construction to begin. Approval of the MOAs will simply provide a method for Public Works to finance timely review of permit applications by the Corps. For the Ballona Wetlands Restoration Project, the action will allow the Corps to begin to engage in a preliminary review of the permit application and evaluation of the proposed project, its alternatives, and environmental impacts. Due to the preceding clarifications about the Board letter and approval, we do not recommend making any changes to the Board letter.

If you have any questions, please contact me at (626) 458-4002 or your staff may contact Gary Hildebrand, Assistant Deputy Director, at (626) 458-4300 or ghildeb@dpw.lacounty.gov.

JTS:sw

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cc: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office